

## **Applicants' Response**

### **Priority**

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in many countries on November 3, 2000. It is noted, however, that the applicant has not filed a certified copy of the foreign application(s) as required by 35 U.S.C. 119(b).

Applicants have submitted a replacement Declaration and Power of Attorney. The foreign applications were inadvertently listed for priority which was unnecessary because all the foreign applications were all based of earlier filed US applications. Applicant's apology for any confusion in the patent office this may have caused. In view of the corrected declaration and power of attorney, Applicants submit the present rejection has been rendered moot and that there is no longer the need to submit certified copies of the foreign application(s) under 35 U.S.C. 119(b).

### **Information Disclosure Statement**

2. Applicants thank the Examiner for acknowledging the additional references cited on April 14, 2004 and January 10, 2007.

### **Specification**

3. The disclosure was objected to because there was a misnumbered application number.

Applicants have submitted correction to page 1, lines 5-9, of the specification to reflect the correction of the misnumbered application number. In view of the submitted correction Applicants respectively request the present rejection be removed.

4. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper (see p.8, lines 2-7 of the specification and Tables 1b and 1c. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome an objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the client.

Applicants have left Tables 1a, 1b and 1c in the specification but have removed the sentence found on page 8, lines 2-3 that indicate the documents listed in Table 1 are incorporated by reference. All references cited indicated locations have been submitted to the Examiner on their IDS. In view of the submitted amendments Applicants respectively request the present rejection be removed.

#### **Oath and Declaration**

5. The oath or declaration was found to be defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application by application number and filing date is required.

Applicants submit here with a new oath and declaration that complies with 37 CFR 1.67(a). In view of the newly submitted oath and declaration Applicants respectively request the present rejection removed.

#### **Double Patenting Rejection**

Claims 20-25 were rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 14-19 of prior U.S. Patent No. 6,151,525, and claims 18-23(sic. Should

be claims 19-23) of prior U.S. Patent No. 6,775,574. This is a double patenting rejection.

Applicants have cancelled claims 1-19 and have amended claim 20 (thereby changing the nature of claims 21-25 being dependent on Claim 20). In view of the cancelled claim 18-23 and having amended claim 20, Applicants respectively request the current Double Patent Rejection be removed.

**Nonstatutory obviousness-type double patenting**

Claims 1-12, 14, and 19 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10, 12, and 19 of U.S. Patent no. 6,151,525. Although the conflicting claims were found not to be identical, they were considered as not being patentably distinct from each other because the same subject matter of a "cell repopulation source capable of forming new contractile tissue; near damaged myocardial tissue is disclosed. The Examiner takes the position that the "infarct zone" specified by the '525 patent would inherently include "damaged" tissue.

Claims 1, 3, 4, and 6-19 were also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent no. 6,775,574. Although the conflicting claims were not found to be identical, they were considered as not patentably distinct from each other because the same subject matter of a "cell repopulation source . . . capable of forming new contractile tissue" near damaged myocardial tissue is disclosed. The Examiner takes the position that the "infarct zone" specified by the '525 patent would inherently include "damaged" tissue.

Applicants submit herewith a terminal disclaimer in view of issue patents US 6,151,525 and US 6,775,574. In view of the submitted terminal disclaimer Applicants respectively request the obviousness type double patent rejection be removed.

**Conclusion**

Applicants believe they have corrected the deficiencies found in the claims and application, and respectively indicate the application is now in condition for allowance.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth J. Collier", followed by the date "3/6/08". The signature is written over a horizontal line.

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**AMENDMENTS OF THE SPECIFICATION**  
**(MARKED UP VERSION)**

Page 1, lines 5-9:

This application is a continuation of application number 09/654,185, filed on September 1, 2000, now US 6,775,574, issued August 10, 2005, which is a continuation of US serial number 09/145,743, filed September 2, 1998, now US 6,151,525, issued November 21, 2000, which claims priority to US provisional serial 60/064,703, filed November 7, 1997, all applications which are incorporated herein by reference. ~~60/064,703 filed November 7, 1997; 09/145,753 filed September 2, 1998; 09/654,184 filed September 1, 2000; 09/706,531 filed November 3, 200 and 10/692,878 filed October 24, 2003.~~

Page 8, 1<sup>st</sup> paragraph, lines 2-7:

~~All patent and nonpatent documents listed in Table 1 are hereby incorporated by reference herein in their respective entireties.~~ As those of ordinary skill in the art will appreciate upon reading the Summary of the Invention, Detailed Description of Preferred Embodiments, and Claims set forth below, many of the systems, devices, and methods disclosed in these documents may be modified advantageously by using the teachings of the present invention.